

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO.19466 OF 2006

Between:

M/s.Heritage Foods (India) Limited

. . .Petitioner

AND

Commercial Tax Officer,
Khairtabad Circle, Hyderabad and others

. . .Respondents

Counsel for the Petitioner : Shri S.Krishna Murthy

Counsel for the Respondents : Government Pleader for
Commercial Taxes

Dated: 23rd October, 2006

: ORDER :

PER G.S.SINGHVI, CJ

Having failed to persuade Appellate Deputy Commissioner (Commercial Taxes), Hyderabad (respondent No.2) and Additional Commissioner (Commercial Taxes) (Legal) (respondent No.3) to entertain its prayer for staying the recovery of tax amounting to Rs.16,21,012/-, the petitioner has filed this writ petition under Article 226 of the Constitution.

The petitioner is registered as a dealer under the Andhra Pradesh General Sales Tax Act, 1957 (for short, 'the Act'). It is engaged in the business of milk and milk products. For the assessment year 2002-2003, Commercial Tax Officer, Khairtabad Circle (respondent No.1) issued notice to the petitioner. After considering the plea put forward by the petitioner that milk and milk products are exempt from tax, respondent No.1 passed order dated 22-3-2006, whereby he created an additional demand of Rs.79,75,465/-. The relevant extracts of that order, which has been placed on record as annexure P1, are re-produced below:

“ The dealer's contention with regard to the notification is clearly examined and observed as under:

The Milk is an unclassified item liable to tax under Seventh Schedule of the APGST Act. Under GO Ms.No.1091, only those dealers who exclusively dealing in Milk alone are exempt from payment of tax on its sales. The assessee apart from dealing in Milk also deals in other goods such as Butter and Ghee, Butter Milk, Cream etc. Butter and Ghee are taxable under different entries in the First Schedule to the APGST Act, 57. Therefore, by no stretch of imagination, the assessee can be classified as exclusive dealer in Milk so as to get general exemption from payment of tax under Section 6A of the APGST Act, 57 on the purchase of Milk from unregistered dealers. All the GOs upon which the

assessee relied upon never dealt with the scope of levy of purchase tax under Section 6A of the APGST Act and levy of tax on Butter and Ghee. Those GOs dealt with granting of exemption at the point of sale of Milk, Milk products such as Butter Milk, Kova, Curd and Pasteurised Milk. As the present proposed levy is tax on purchases of Milk by the assessee from unregistered dealers is under Section 6A and on the sale of Butter and Ghee, the GOs relied upon by the assessee have absolutely no application. As the assessee is not an exclusive dealer in Milk and Milk is not generally exempt under G.O.Ms.No. 1091, the assessee cannot get Blanket exemption even on their purchase of Milk from unregistered dealer, more so when such milk is consumed in the manufacture of other goods.

Further, Section 6-A(ii) of the APGST Act contemplates that every dealer who in the course of the business purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than registered dealer shall pay purchase tax on those goods if they are consumed in the manufacture of other goods for sale or consumes them otherwise. In view of this provision, the petitioner who purchased milk from unregistered dealers and consumed such milk in the manufacture of other goods such as butter, ghee, cream etc., shall get the liability to pay purchase tax under Section 6-A of the APGST Act, 1957. The constitutional validity of Section 6-A of the APGST Act has already been upheld by the Hon'ble High Court of Andhra Pradesh in a judgment reported in 51 STC p.1 and also the Hon'ble Apex Court in 88 STC p.98.

The judgment of the Hon'ble Supreme Court in 88 STC p.98 has got direct relevance to the facts of the case. The sum and substance of the Supreme Court judgment in 88 STC p.98 interpreting Section 6-A of the APGST Act is to the effect that whenever a dealer purchases raw material which are taxable from unregistered dealer or from registered dealers who are exempt from payment of tax under the APGST Act and consumes such goods in the manufacture of other goods for sale. Such dealers have to pay tax on their purchases under Section 6-A of the APGST Act. The petitioner having purchased raw material milk from unregistered

dealers and consumed in the manufacture of other goods such butter and ghee, cream etc., falls within the scope of Supreme Court judgment.

The assessee have further contended that by GO Ms.No.1091, he is an “exclusive dealer in Milk” and entitled to avail benefit of exemption under the GO. The by-products obtained from the surplus Milk though sold regularly on a large scale qualify for exemption in terms of GO Ms.NO.1091. In view of this the assessee have submitted that they are not liable to pay tax on the sales of Butter, Ghee and Cream obtained from surplus milk.

The above contention of the dealer is examined and found that it cannot be accepted for reasons already mentioned in preceding paras. He is not an exclusive dealer of milk when he is manufacturing other items. The judgments relied upon by the assessee have no application to the facts of the case in as much as these judgments dealt with levy of tax on the sales of milk and milk products such as buttermilk, curd, kova while interpreting G.O.Ms.No.1091. These judgments never dealt with the scope of Section 6-A of the APGST Act and the levy of tax on the sales of Butter and Ghee. It is also to be noticed that legislature never intended to treat Butter and Ghee as the product of Milk having inserted a separate entry for the same in the first Schedule to the APGST Act, 57. But terms Ghee and Cream are not generally exempted goods, they are taxable @ 8% under APGST Act, 57. On the other hand, the judgment that would support the case of the revenue is the latest judgments of Hon'ble High Court of Andhra Pradesh in T.R.C.No.164/99, dated 21.12.2004, the judgment in 10 APSTJ p.79 in Sri Krishna Enterprises and 40 APSTJ p.125. Therefore, the contention of the dealers is hereby rejected.”

Simultaneously, he issued demand notice of the same date and called upon the petitioner to pay Rs.16,21,012/- after adjusting Rs.63,54,953/- covered by deferment.

The petitioner challenged the order of assessment by filing an appeal under Section 19 (1) of the Act. It also filed an application for stay. By an order dated 24-7-2006 (copy of that order has not been

placed on the record of the writ petition), respondent No.2 rejected the appellant's prayer for stay. Appeal preferred by the petitioner was dismissed by respondent No.3 vide his order dated 1-9-2006. The reasons assigned by respondent No.3 for refusing to entertain the petitioner's prayer for stay are extracted below:

“.....ADC (CT) rejected for want of prima facie case. The Assessing Authority rejected the contention noticing that the petitioner is not an exclusive dealer in milk and also for the reason that the Legislature never intended to treat Butter & Ghee as the product of milk having inserted in separate Entry for the same in the 1st Schedule to the APGST Act, 1957. The Assessing Authority took support from the latest judgment of the High Court in T.R.C.No.164/1999 dt.21.12.2004, 10 APSTJ 79 and the case of M/s. SRI KRISHNA ENTERPRISES, 40 APSTJ 125. It is seen that G.O.Ms.No.1091 was issued to render justice to milk vendors who sell milk after buying from un-regd. Dealers and also utilize the surplus thereof in manufacturing of milk products. Milk is not exempted commodity. The G.Os. issued contain conditions. The petitioner's case does not fall within the ambit of the conditions stipulated therein. Hence, I do not see case for the petitioners granting stay.”

Shri S.Krishna Murthy, learned counsel for the petitioner relied on notification dated 31.01.2000 issued by the State Government, which was circulated vide G.O.Ms.No.54 to show that the Government has exempted the sales of Pasteurized Milk and Processed Salt and argued that the assessing authority committed a jurisdictional error by creating liability against his client by wrongly assuming that purchase tax is leviable on the milk and milk products. Learned counsel then relied on the judgments of the Division Bench in **State of Andhra Pradesh v. M/s.Venkateswara Bar and Restaurant, Nakkalagutta, Hanamkonda**^[1] and **State of Andhra Pradesh v. The Chittoor District Cooperative Milk Products Union Limited, Chittoor**^[2] and argued that even though the order impugned in the writ petition is

interlocutory in nature, this Court should entertain the writ petition and nullify the effect of the order of assessment made by respondent No.1 by staying the demand notice.

Learned Government Pleader for Commercial Taxes supported the impugned order and argued that this Court may not interfere with the discretion exercised by the competent authority under Section 19(2-B) of the Act.

We have considered the respective submissions and perused the record.

Since the appeal filed by the petitioner against the order of assessment is pending adjudication, it is neither desirable nor proper for us to express any opinion on the merits and demerits of the plea raised by the petitioner on the applicability of notification dated 31.01.2000 to the goods manufactured by it. However, we do not have any hesitation to hold that the petitioner has failed to make out a case for this Court's interference with the discretion exercised by respondent No.3 not to entertain its prayer for stay of the demand created by respondent No.1, because it is settled law that the High Court should not, ordinarily, interfere with the action taken by the competent authority in the matter of recovery of tax, fee, cess etc. more so, when an effective alternative remedy is available to the aggrieved person – **Titaghur Paper Mills Co. Ltd. v. State of Orissa** ^[3] and that the power vested in the High Courts under Article 226 of the Constitution of India should not be used only for the purpose of granting interim relief when the main case is pending before some other judicial or quasi judicial forum – **Assistant Collector of Central Excise, Chandan Nagar v. Dunlop India Ltd.** ^[4]

We are further of the view that sub-sections (2-A) and (2-B) of Section 19 of the Act do not obligate the concerned authorities to stay the recovery of tax as a matter of course. Rather, they are required to examine each case on merits and then decide whether there is any

valid ground or justification to stay the collection of tax. The discretion exercised by the competent authority to stay or not to stay the collection of tax cannot be interfered with by the High Court under Article 226 of the Constitution unless it is satisfied that the approach adopted by the concerned authority is perverse or the reasons assigned by it are irrelevant or extraneous.

In the present case, we find that respondent No.1 has assigned cogent reasons for creating additional tax liability against the petitioner and respondent No.3 has assigned cogent reasons for refusing to stay the demand notice. It is neither a case of non-application of mind by the officer concerned nor there is any perversity in the approach adopted by respondent No.3. Therefore, we do not find any valid ground to entertain the petitioner's prayer, more so, because no irreparable injury or loss is going to be caused to it by depositing the remaining amount of tax. Needless to say that the amount deposited by the petitioner will remain subject to final adjudication of the appeal preferred by it against the assessment order.

For the reasons mentioned above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.24569 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

23-10-2006

kvni/svs

[\[1\]](#) (1997) 24 APSTJ 1

[\[2\]](#) (1999) 29 APSTJ 111

[\[3\]](#) AIR 1983 SC 603

[\[4\]](#) AIR 1985 SC 300